



San Francisco

Bay Area Rapid Transit District

2016 Disparity Study Presentation

For Public Information Session

December 1, 2016

Acknowledgements

Miller³ Consulting, Inc. wishes to acknowledge the leadership and commitment of

San Francisco Bay Area Rapid Transit District

General Manager's Office

Office of Civil Rights

Along with

Purchasing Department

Planning, Development and Construction

Maintenance and Engineering

Information Technology

who have accepted the challenge of participating in the Disparity Study process in the best interest of those whom they serve.

Outline of Presentation

Miller³ Consulting Background and Experience

Legal Framework for Race and Gender Conscious Programs and Disparity Studies

Miller³ Consulting Approach and Methodology

Statistical Analysis

Disparity Study Qualitative Findings

Conclusions and Recommendations

Next Steps: Post-Study Report

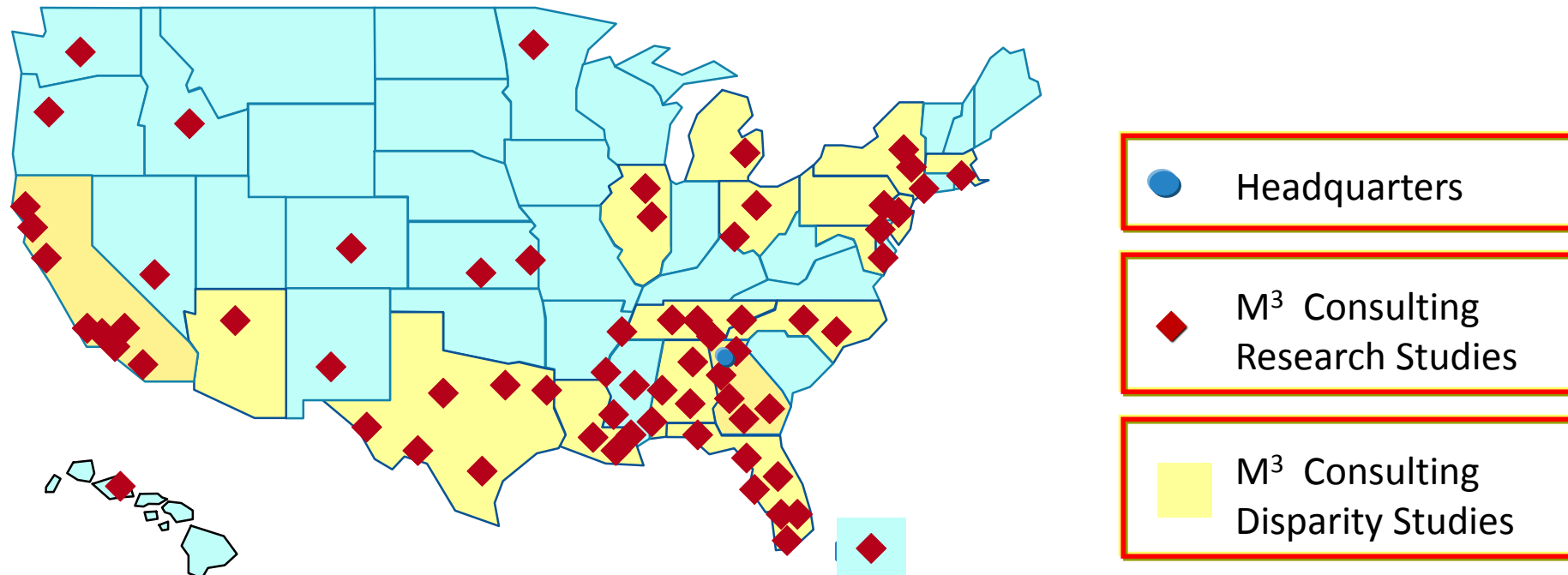
Miller³ Consulting Background and Experience

M³ CONSULTING ADVANTAGE

FIRM EXPERIENCE

Miller³ Consulting, Inc.

The Leader in M/W/DBE Analysis and Design



- Disparity study in Hillsborough County in 1988 anticipated *Croson* decision in 1989.
- Conducted disparity studies for more than 120 public sector entities:
 - Transportation Agencies, Municipalities, States, Schools and Colleges, Electrical Authorities, Water/Sewer Authorities, Housing Authorities, Hospitals

M³ Consulting Advantage:

Research Rooted in
Knowledge of and
Excellence in Public
Sector Management



M³ Consulting Experience

- Over 25 years of experience in Inclusive Procurement and Economic Development Consulting
- Creators of disparity study industry and *RWASM* analysis
- Disparity Study Management Team has an average of 20 years of disparity study experience
- Strong local team with extensive relevant experience
 - 360 Total Concepts, LLC (Oakland MWBE)
 - Q & A Research, Inc. (Walnut Creek MBE)
- Successful litigation
- Turnkey approach to S/M/W/DBE service delivery

Legal Framework for Race and Gender Conscious Programs and Disparity Studies

RICHMOND V CROSON

U.S. DOT RESPONSE TO WESTERN STATES PAVING V. WASHINGTON DOT

PROPOSITION 209

CURRENT POSITION OF THE U.S. SUPREME COURT IN TEXAS DEPT. OF HOUSING AND COMMUNITY AFFAIRS V. THE INCLUSIVE COMMUNITIES PROJECT

Richmond v. Croson

U.S. Supreme Court, 1989

- Compelling governmental interest provides a factual predicate for an MWBE/DBE program
 - Active participant in discrimination
 - Passive participant in discrimination
- Narrow Tailoring -- program must be focused on remedy to identified discrimination



Richmond v. Croson cont.

U.S. Supreme Court, 1989

- In conjunction with or following race neutral efforts, race and gender-conscious initiatives should include:
 - Sunset provision
 - Graduation provision
 - Flexible goals
 - Tied to availability
 - Limit impact on third parties
 - Limited to groups that have suffered discrimination or have shown statistically significant disparity

U.S. DOT Response to *Western States Paving v. Washington DOT* 9th Circuit

- Factual predicate or disparity study should
 - Review and assess discrimination separately for each group presumed disadvantaged under 49 CFR Part 26 and include anecdotal evidence
 - Consider Part 26 “Step 2” evidence, such as barriers in obtaining bonding and financing, disparities in business formation and earnings
 - Statistical analysis should rigorously review reasons other than discrimination, for disparity, which may entail the use of regression analysis
 - Analysis should quantify differences in DBE availability and participation in race neutral and race conscious contracts; exercise caution in drawing conclusions of discrimination based on small differences
 - DBE availability should not be calculated based on data inflated by race conscious programs that may not have been narrowly tailored
 - Consider evidence gathering that Courts have approved in the past.

Proposition 209

California Constitution, Article I, § 31(a), 1997

- Upheld as constitutional, but does not outweigh Equal Protection Clause
 - No final opinion on facts that overcome Proposition 209 and allows race and gender conscious remedies
- Applies to both non-federal initiatives and federal programs that “permit”, as opposed to “requires” race and gender conscious remedies
- Types of activity allowable:
 - Monitoring, tracking and reporting
 - Inclusive outreach
 - Non-discrimination programs that are not in title only

Texas Dept. of Housing and Community Affairs v. The Inclusive Communities Project, Inc.

U.S. Supreme Court, 2015

- Upheld the disparate impact standard
- Disparate impact finding must be clearly connected to public entity's policies
 - Policies that create “artificial, arbitrary, and unnecessary barriers”
- Remedial orders should focus on eliminating the offending practice and designing race neutral remedies

Approach and Methodology

WHAT DO YOU ACHIEVE WITH A DISPARITY STUDY?

10-PART METHODOLOGY

What Do You Achieve With a Disparity Study?

**Diagnosis Needed to Provide Foundation for Addressing Objectives,
Strategies, Tactics and Tasks of Increasing DBE, MWBE and SB
Participation**

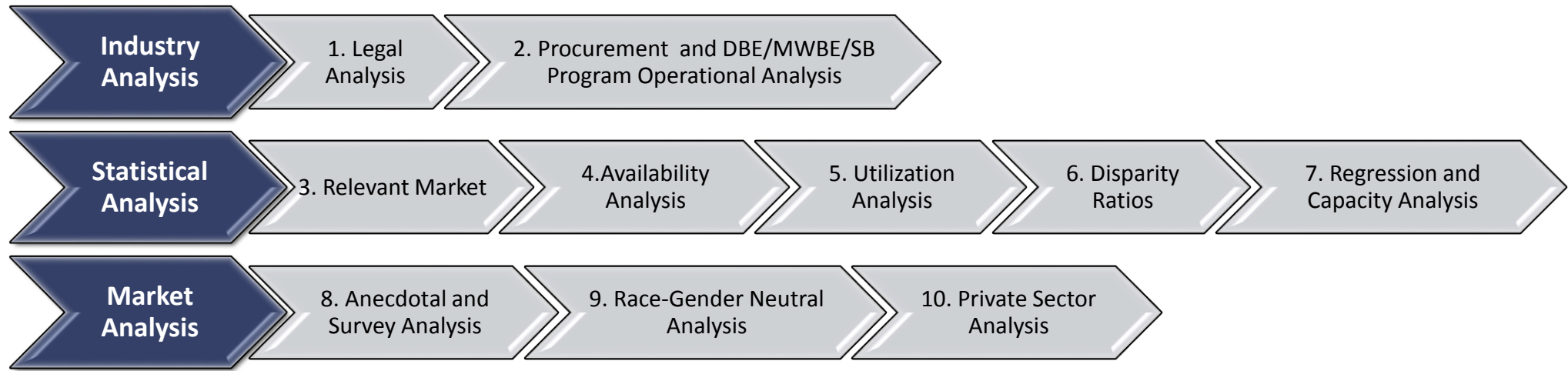
Objective—What is the objective of your organization as it relates to DBE, MWBE and SB participation?

Strategy—What strategies will you employ to achieve your objective?

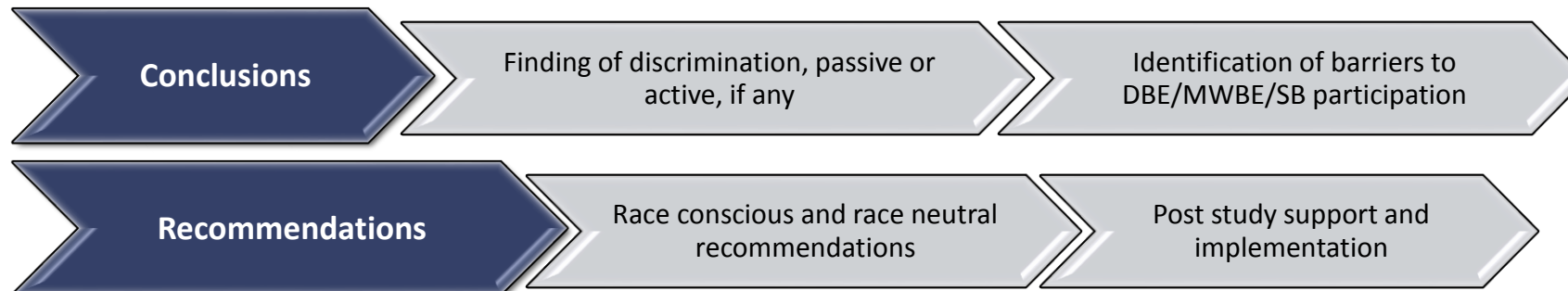
Tactic—How will you create tactics that further the implementation of your strategies?

Task—How does completing the task of a disparity study assist you to achieve your objective, strategies and tactics?

10 Part Methodology for BART Disparity Study



10 Part Methodology Leads To



Statistical Analysis

RELEVANT MARKET

AVAILABILITY

UTILIZATION

DISPARITY

CAPACITY AND REGRESSION

Relevant Market

Determine Relevant Market

- Geographical area encompassing approximately 75 percent of BART's commercial activity
- Test by determining location of approximately percent of vendors, bidders and awardees by industry
- Data reviewed -- Bidder data, Contract Awards data, PO and AP data, On-call A&E data, Plan holders data, Vendor data,

Relevant Market Areas Considered

San Francisco-Oakland-Hayward MSA

- 5 counties: Alameda, San Francisco, Contra Costa, Marin, San Mateo; This MSA is a subset of the San Francisco Bay Area

San Francisco Bay Area

- 9 counties: Alameda, San Francisco, Contra Costa, Marin, San Mateo, Solana, Napa, Santa Clara, Sonoma

San Jose-San Francisco-Oakland CSA

- 12 counties: Alameda, San Francisco, Contra Costa, Marin, San Mateo, Solana, Napa, Santa Clara, Sonoma, San Joaquin, Santa Cruz, San Benito

CSA + Sacramento

- 12 counties + Sacramento County

State of California

Nationwide

Relevant Market Determination, FY 2011-2014

Procurement Type

Architecture & Engineering

Construction

Professional Services

Other Services

Procurement

Relevant Market

San Francisco-Oakland-Hayward MSA

San Francisco Bay Area

State of California

State of California

Nationwide

Availability

M³ Consulting's *RWASM* Model

Premise: Those firms who are *Ready, Willing and Able* to do business with BART

- Ready—firms that exist
- Willing—firms understand the requirements of the work being requested and want to perform the work
- Able—firms with the capacity to do the job

M³ Consulting's Availability Model

BART

Ready, Willing and Able (RWASM) Availability

Bidders +Subbidders

Prime Awardees +Subawardees

Vendors

Certified DBEs, MWBEs, SBEs



Public Availability

BART RWASM

Other Public Agencies Prime Bidders and Subbidders

Other Public Agencies Prime Awardees +Sub Awardees

Other Public Agencies Vendors

Other Public Agencies Certified MWBEs



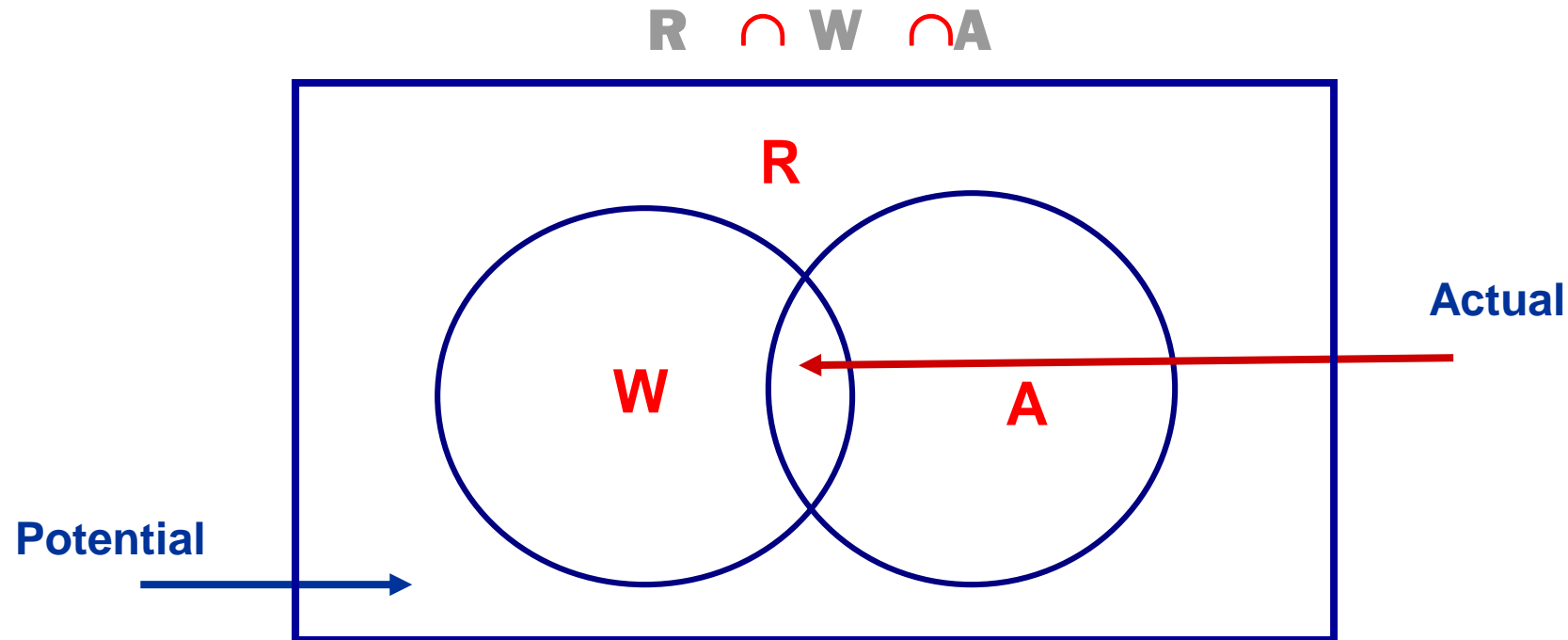
Marketplace Availability

Dun & Bradstreet

Reed Construction

Census 2012 SBO data

Actual and Potential Availability of Firms



- Actual—BART Bidders, Awardees, Vendors
- Potential (Marketplace Availability)—Dun & Bradstreet, Reed Construction, Census SBO

BART Specific RWASM Availability

RWA SM Availability Level	RWA SM Availability Definition
Level 1	BART Bidders and Sub-bidders
Level 2	BART Bidders and Sub-bidders + Informal and Non-competitive Awardees
Level 3	BART Bidders and Sub-bidders + Informal and Non-competitive Awardees + Prime/Subcontractors
Level 4	BART Bidders and Sub-bidders + Informal and Non-competitive Awardees + Prime/Subcontractors + Plan Holders and BART Vendor

BART Level 3 RWA SM Availability

(by Relevant Market and Percent, FY 2011-2014)

Race/Ethnicity/ Gender	A&E MSA	Construction Bay Area	Professional Service State	Other Services State	Procurement Nationwide
	%	%	%	%	%
Non-M/W/DBE	62.27	67.25	82.60	83.51	93.63
African American	7.65	4.86	3.96	3.78	0.84
Asian American	10.29	6.48	2.42	0.69	0.84
Hispanic American	3.96	6.85	2.42	1.37	0.59
Other MBE	0.53	0.25	0.00	0.00	0.00
Total MBE	22.43	18.43	8.81	5.84	2.26
Caucasian Female	7.39	4.48	3.08	1.37	0.67
Total M/W/DBE	29.82	22.91	11.89	7.22	2.93
D&B MWBE	7.92	9.84	5.51	9.28	3.43
Total Count of Firms	379 firms	803 firms	454 firms	291 firms	1,194 firms

Dun & Bradstreet Availability

(by Bay Area and Percent, FY 2014)

Ethnicity	A&E	Construction	Professional Services	Other Services	Procurement
Non-MWBE	78.47	88.18	85.55	83.74	83.44
MBE	8.03	4.74	3.37	3.57	4.59
MWBE	5.40	2.15	3.18	3.83	3.64
WBE	8.10	4.93	7.91	8.86	8.33
Total MWBE	21.53	11.82	14.45	16.26	16.56
Total Count of Firms	3,149 firms	7,683 firms	13,193 firms	10,740 firms	11,523 firms

Utilization

Utilization Analysis

Definition:

- The actual procurement award or purchasing activity of BART.

Data Sources Reviewed and Analyzed:

A&E	On-Call Commitments On-Call Payments*	Purchase Orders	Payments
Construction	Contract Awards*	Purchase Orders	Payments
Professional Services	Contract Awards	Purchase Orders*	Payments
Other Services	Contract Awards	Purchase Orders*	Payments
Procurement	Contract Awards	Purchase Orders*	Payments

*Data Sources determined as most robust source of data and relied upon for calculation of disparity ratios used for conclusions on inference of discrimination

Utilization Activity Measured by:

- Procurement categories
- Race, gender and ethnicity
- Relevant market
- Prime and subcontractor utilization (where possible)
- Federal and Non-Federal
- Competitive and non-competitive thresholds

BART Utilization Summary

(by Relevant Market and Percent, FY 2011-2014)

Race/Ethnicity/ Gender	A&E	Construction	Professional Service	Other Services	Procurement
	On-Call Payments	Contract Awards	Purchase Orders	Purchase Orders	Purchase Orders
	%	%	%	%	%
Non-M/W/DBE	61.06	75.23	84.17	77.58	97.30
African American	7.39	3.11	12.37	1.80	0.23
Asian American	23.39	3.65	0.19	1.14	0.29
Hispanic American	1.37	4.62	0.37	3.60	0.81
Total MBE	32.15	11.38	12.93	6.54	1.33
Caucasian Female	2.45	2.02	0.54	0.12	0.03
Total M/W/DBE	34.60	13.39	13.47	6.65	1.36
D&B MWBE*	4.35	11.38	2.36	15.77	1.35
Total Dollars	96,664,101	491,596,120	66,669,437	17,897,668	327,693,386

*Potential MWBEs in the Dun & Bradstreet Database

BART Utilization—A&E On Call Payments Detailed

(by Relevant Market and Percent, FY 2011-2014)

Race/Ethnicity/ Gender	Pure Prime + Subcontractor	Pure Prime	Subcontractor	Federal	Non-Federal
Non-M/W/DBE	61.06	58.71	64.76	60.52	61.50
African American	7.39	4.99	11.17	14.95	1.11
Asian American	23.39	26.90	17.85	9.91	34.58
Hispanic American	1.37	1.93	0.49	0.42	2.16
Total MBE	32.15	33.82	29.51	25.28	37.85
Caucasian Female	2.45	2.18	2.88	4.62	0.65
Total M/W/DBE	34.60	36.00	32.38	29.90	38.50
D&B MWBE*	4.35	5.29	2.86	9.58	0.00
Total Dollars	96,664,101	59,145,004	37,519,097	43,854,156	52,809,945

Pure Prime—Prime net of subcontractors;

*Potential MWBEs in the Dun & Bradstreet Database

BART Utilization—A&E On Call (IDIQ)

Commitments versus On Call (IDIQ) Payments

(by Relevant Market and Percent, FY 2011-2014)

Race/Ethnicity/ Gender	Commitments	Payments
	%	%
Non-M/W/DBE	59.01	61.06
African American	15.17	7.39
Asian American	16.38	23.39
Hispanic American	1.70	1.37
Total MBE	33.25	32.15
Caucasian Female	2.64	2.45
Total M/W/DBE	35.89	34.60
D&B MWBE*	5.10	4.35
Total Dollars	129,594,014	96,664,101

*Potential MWBEs in the Dun & Bradstreet Database

BART Utilization—Construction Detailed

(by Relevant Market and Percent, FY 2011-2014)

Race/Ethnicity/ Gender	Pure Prime + Subcontractor	Pure Prime	Subcontractor	Federal Subject to DBE Goals	Non-Federal
	%	%	%	%	%
Non-M/W/DBE	75.23	89.53	44.23	68.95	76.74
African American	3.11	0.07	9.70	2.82	3.18
Asian American	3.65	0.08	11.38	6.59	2.94
Hispanic American	4.62	0.70	13.11	4.51	4.64
Other MBE	0.00	0.00	0.12	0.00	0.00
Total MBE	11.38	0.85	34.27	13.92	10.76
Caucasian Female	2.02	0.00	6.38	3.18	1.74
Total M/W/DBE	13.39	0.85	40.64	17.10	12.50
D&B MWBE*	11.38	9.62	15.04	13.95	10.76
Total Dollars	491,596,120	336,353,443	155,422,675	95,474,628	396,121,492

*Potential MWBEs in the Dun & Bradstreet Database

BART Utilization Thresholds

(by Relevant Market and Percent, FY 2011-2014)

	A&E*		Construction**		Professional Service*		Other Services*		Procurement*	
	MBE	WBE	MBE	WBE	MBE	WBE	MBE	WBE	MBE	WBE
Below 10K	23.59	1.97	38.14	7.34	2.61	1.91	1.59	0.71	2.39	0.16
	1,090,855		159,999		2,106,979		956,257		22,436,031	
10K-50K	18.31	0.00	27.31	17.86	7.79	1.50	0.44	0.35	1.87	0.14
	12,532,314		1,833,787		9,586,376		4,054,870		45,420,944	
50K-100K	18.78	0.00	38.59	13.93	8.65	0.89	5.61	0.00	1.30	0.00
	17,365,267		2,664,504		7,319,338		3,525,479		31,029,052	
100K-500K	22.92	0.00	30.85	10.22	23.60	1.15	7.83	0.00	1.73	0.00
	58,739,225		32,622,461		9,900,449		3,755,047		26,302,888	

*Based on Purchase Orders

**Based on Contract Awards

BART Utilization Thresholds

(by Relevant Market and Percent, FY 2011-2014)

	A&E*		Construction**		Professional Service*		Other Services*		Procurement*	
	MBE	WBE	MBE	WBE	MBE	WBE	MBE	WBE	MBE	WBE
500K-1.5M	17.94	0.00	26.04	7.05	26.06	0.00	17.84	0.00	7.42	0.00
	58,739,225		59,468,759		11,726,912		3,614,114		28,406,067	
1.5M-5M	9.07	0.00	19.23	2.04	18.20	0.00	0.00	0.00	0.00	0.00
	76,247,994		81,902,479		9,850,642		2,000,000		39,775,879	
5M-15M	17.15	0.00	12.23	0.00	0.00	0.00	NA	NA	0.00	0.00
	42,068,444		106,567,366		16,303,742		NA		30,580,372	
Above 15M	NA	NA	0.00	0.00	NA	NA	NA	NA	0.00	0.00
	NA		206,376,764		NA		NA		109,033,960	

Disparity Findings

M³ Consulting Disparity Ratio© Calculation

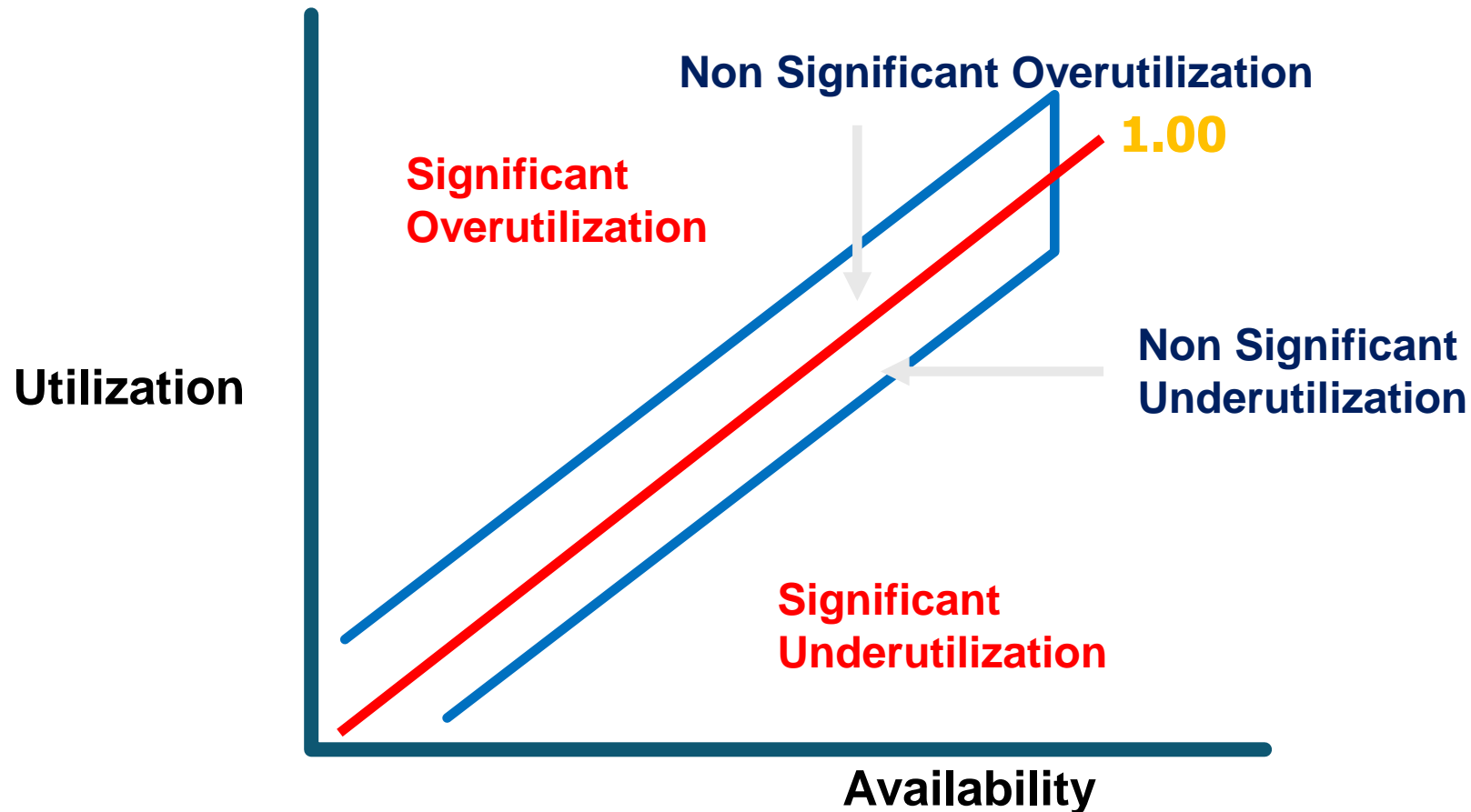
The ratio of the percentage of M/W/DBEs in the market (availability) compared to the proportion of dollars spent with those businesses (utilization)

$$D = \frac{U}{A}$$

TM

M³ Disparity Ratio Concept©...

Disparity=Utilization/Availability



BART Disparity Findings

(by Relevant Market and Percent, FY 2011-2014)

Race/Ethnicity/ Gender	A&E		Construction		Professional Service		Other Services		Procurement	
	(On-call Payments)		(Contract Awards)		(POs)		(POs)		(POs)	
	Ratio	Sign.	Ratio	Sign.	Ratio	Sign.	Ratio	Sign.	Ratio	Sign.
Non-M/W/DBE	0.98	S	1.12	S	1.02	S	0.93	S	1.04	S
African American	0.97	S	0.64	S	3.12	S	0.48	S	0.27	S
Asian American	2.27	S	0.56	S	0.08	S	1.65	S	0.35	S
Hispanic American	0.35	S	0.67	S	0.15	S	2.63	S	1.37	S
Total MBE	1.43	S	0.62	S	1.47	S	1.12	S	0.59	S
Caucasian Female	0.33	S	0.45	S	0.18	S	0.09	S	0.04	S
Total M/W/DBE	1.16	S	0.58	S	1.13	S	0.92	S	0.46	S
D&B MWBE*	0.55	S	1.16	S	0.43	S	1.70	S	0.39	S

*Potential MWBEs in the Dun & Bradstreet Database

S = Statistically significant

1.00 = Parity

Capacity and Regression Findings

Capacity Findings Based on Dun & Bradstreet and M³ Consulting Survey

Dun & Bradstreet

- Based on number of employees and revenues for D&B firms in Bay Area, there is little difference in capacity.

M³ Consulting Survey

- Women-owned firms apply for bonds and loans at similar rates as their male counterparts, but are denied significantly fewer times. MBEs apply for bonds and loans half as much as Non-MWBEs, but are denied more often.
- MBEs and WBEs are younger and have fewer employees than Non-MWBEs. While start up monies are not significantly different, gross receipts for MBEs and WBEs are significantly smaller than for Non-MWBEs.

Regression Findings Based on M³ Consulting Survey and PUMS

M³ Consulting Survey

- Any variation of revenues of African American-, Asian American- and Hispanic American-owned firms from Non-MWBEs was due to chance. Gender appears to have a positive influence on revenue for Caucasian Female-owned businesses.

U.S. Census Public Use Microsamples Data (PUMS) for State of California

- Constraints on capacity more evident in factors impacting business formation.
- Non-minority firms are more likely to be self-employed than Asian Americans (1.62x) and African Americans (1.87x), but only half as likely to be self-employed than Hispanic Americans. Hispanic Americans earn \$960 more than Non-minority firms. African Americans earn \$1,546 less and Asian Americans earn \$1,535 less than Non-minority firms.
- Women are half as likely to be self-employed as non-minority firms and earn \$1,803 less.

Disparity Study Qualitative Analysis

PROCUREMENT FINDINGS

ANECDOTAL FINDINGS

PRIVATE SECTOR FINDINGS

RACE NEUTRAL FINDINGS

BART Organizational Findings

Issues Impacting DBE, MWBE, and SB Participation in BART Procurement System

BART enjoys Forward Looking Leadership and a Mission That Matters

Lack of integration of diversity and inclusion throughout BART's Strategic Plan minimizes organizational focus on achievement of DBE, SBE and MWBE inclusion in BART opportunities as a policy objective.

Decentralized procurement function reduces BART's ability to develop an inclusive and sustainable procurement operation; lack of ERP integration further exacerbates problems caused by decentralization.

Minimal procurement forecasting reduces BART's ability to engage in effective planning to meet BART's Strategic Mission of "economic prosperity" and to achieve inclusive procurement through its procurement opportunities.

Issues Impacting DBE, MWBE, and SB Participation in BART Procurement System

Underdeveloped vendor registration impacts BART's ability to effectively identify DBEs, SBEs and MWBEs "ready and willing" to bid on BART opportunities, as well as reduces BART's ability to establish tailored project goals.

While sealed bid and RFP processes are consistent with industry practice, over-reliance on broad On-call contracts reduces BART's ability to ensure inclusiveness and sustainability in these procurements.

BART's concerns on intervening into the prime/subcontractor relationship may provide an opening for prime contractor and consultant behavior inconsistent with the spirit and intent of laws and regulations regarding subcontractor substitution.

While BART's General Manager has exhibited leadership in promoting DBE, SBE and MWBE participation through race-neutral programmatic initiatives and community outreach, the effectiveness of these initiatives are reduced by the issues outlined above.

Anecdotal Findings

Anecdotal Analysis

One-on-One In-Depth Interview and Focus Group Participants			
Firm Owner Race/Gender	Interview Count	Firm Industry Category	Interview Count
White male-owned	8	Architecture & Engineering	5
Asian American-owned	10	Construction	22
Black American-owned	12	Professional Services	17
Hispanic American-owned	13	Nonprofessional Services*	3
WBE*	4	Other Services	1
SBE (White male-owned)	1	General Procurement	1
Total	49	Total	49

Anecdotal Comments

DBE, MWBE
and SB
Need for
Support

Reduce contract size

Diversify pool of vendors

Reduce preference for large firms

Streamline certification process, reduce forms and financial documents required

Reduce bonding and insurance requirements

Revise language to prohibit prime's ability to cancel contracts without explanation

Anecdotal Comments

Discriminatory
or
Exclusionary
Treatment by
Prime
Vendors

Lack of prime vendor interest, participation and follow-up in outreach and matchmaking sessions

Subcontractors are listed on bid, but subcontractors not utilized upon award

Excessive bonding and insurance requirements; post bid and post award bonding requirements

Attempts to force subcontractors to change contracted scope of work

Derogatory comments and attitudes

Anecdotal Comments

Capacity Limitations

Businesses closures due to recession; labor shortages and subcontractor unavailability due to lack of recovery from recession

Proposition 209 has contributed the decline in DBEs, MWBEs, SBEs

Decline in qualified construction employees because of lack of interest among young people

Some small firms gravitate to private sector because of less red tape and ability to negotiate and communicate directly with the private sector owner

Private Sector Findings

Private Sector Analysis

Data Sources:

- Occupational and Apprentice Employment Using 2010 Census Data
- Comparison by Occupation of Employment in the Market Place (Based On EEO Census Tabulations)
- Private Sector Bid And Award Activity, Based on Reed Elsevier Data
- City and County of San Francisco Building Permits Data

Private Sector Analysis Based on City and County of San Francisco Building Permits (FY 2010-2015)

Private Sector			Public Sector	
	Dollars	%	Dollars	%
Non-SM/W/DBE	10,497,264,481	97.92	684,927,355	98.56
African American	2,668,559	0.02	47,000	0.01
Asian American	5,839,507	0.05	2,080,076	0.30
Hispanic American	8,899,892	0.08	-	0.00
Other MBE	13,389,021	0.12	1	0.00
Total MBE	30,796,978	0.29	2,127,077	0.31
Caucasian Female	20,300,191	0.19	50,000	0.01
Other Cert. MWBE	2,223,230	0.02	4,741,000	0.68
Total MWBE	53,320,399	0.50	6,918,077	1.00
D&B MWBE	161,534,936	1.51	2,737,119	0.39
Non-Minority SBE	7,877,911	0.07	340,893	0.05
Total	10,719,997,727	100.00	694,923,444	100.00

Private Sector Analysis Based on City and County of San Francisco Building Permits (FY 2010-2015)

Private Sector			Public Sector	
	Counts	%	Counts	%
Non-SM/W/DBE	6,931	95.61	23	76.67
African American	10	0.14	0	0.00
Asian American	25	0.34	1	3.33
Hispanic American	27	0.37	0	0.00
Other MBE	14	0.19	0	0.00
Total MBE	76	1.05	1	3.33
Caucasian Female	21	0.29	1	3.33
Other Cert. MWBE	6	0.08	0	0.00
Total MWBE	103	1.42	2	6.67
D&B MWBE	192	2.65	4	13.33
Non-Minority SBE	23	0.32	1	3.33
Total	7,249	100.00	30	100.00

Race Neutral Findings

Race Neutral Analysis

- Reviewed and summarized services of over 100 race neutral providers
 - Public agency race/gender-conscious and race/gender-neutral goal-based programs
 - Management and technical assistance programs
 - Financial assistance programs
 - Matchmaking, outreach and networking programs
 - Economic and Redevelopment programs
- One-on-One interviews with 18 Executive and Program Directors

Anecdotal Comments from Executive Directors of Race Neutral Providers

Proposition 209 reduced the pool of available DBEs and MWBEs; climate and attitudes towards DBEs and MWBEs changed; “Recession and Proposition 209 was one/two punch

Small, minority and women-owned firm’s lack of access to capital was exacerbated by a combination of factors: recession, bad credit decisions by small firms, lack of payment by primes, predatory lending decisions and excessive financial criteria

Lack of access to decision-makers making contract awards

Lack of access to technical assistance and financial resources

Recommendations

FINDINGS OF INFERENCE OF DISCRIMINATION BASED ON DISPARITY
ANALYSIS

RECOMMENDATIONS

Inference of Discrimination Based on Disparity Ratios – Basis for Race/Gender-Conscious Goals

	Overall	Federal	Non Federal
A&E	<ul style="list-style-type: none"> • African Americans • Hispanic Americans • Caucasian Females 	<ul style="list-style-type: none"> • Asian Americans • Hispanic Americans • Caucasian Females 	<ul style="list-style-type: none"> • African Americans • Hispanic Americans • Caucasian Females
Construction	<ul style="list-style-type: none"> • African Americans • Asian Americans • Hispanic Americans • Caucasian Females 	<ul style="list-style-type: none"> • African Americans • Hispanic Americans • Caucasian Females 	<ul style="list-style-type: none"> • African Americans • Asian Americans • Hispanic Americans • Caucasian Females
Professional Services	<ul style="list-style-type: none"> • Asian Americans • Hispanic Americans • Caucasian Females 	<ul style="list-style-type: none"> • Asian Americans • Hispanic Americans • Caucasian Females 	<ul style="list-style-type: none"> • Asian Americans • Hispanic Americans • Caucasian Females
Other Services	<ul style="list-style-type: none"> • African Americans • Caucasian Females 	<ul style="list-style-type: none"> • African Americans • Caucasian Females 	<ul style="list-style-type: none"> • Hispanic Americans • Caucasian Females
Procurement	<ul style="list-style-type: none"> • African Americans • Asian Americans • Caucasian Females 	<ul style="list-style-type: none"> • African Americans • Asian Americans • Hispanic Americans • Caucasian Females 	<ul style="list-style-type: none"> • African Americans • Asian Americans • Caucasian Females

BART Organizational Recommendations

- BART enjoys forward looking leadership and a mission that matters
- Change inclusion focus from programmatic to organizational focus
 - Identify BART's inclusive procurement objectives
 - Connect BART's inclusive procurement objectives, strategies, tactics and tasks to BART strategic mission

From 2008 Strategic Mission

Provide safe, clean, reliable and customer-friendly regional public transit service that increases mobility and accessibility, ***strengthens community and economic prosperity*** and helps preserve the Bay Area's environment.

From 2015 Strategic Mission--“Leadership and Partnership in the Region”:

- **Economy**—Contribute to the region's global competitiveness and create economic opportunities.
- **Equity**—Provide equitable delivery of transit service, policies, and programs.
- **Environment**—Advance regional sustainability and public health outcomes.

BART Organizational Recommendations

- Recognize that planning *and procurement* are often the first steps in actualizing the Board's Strategic Mission, particularly as it relates to community economic development
- Determine procurement operational structure that ensures reporting to the Board of Directors and General Manager on:
 - Manner in which procurement spend has met the strategic mission and policy objectives established by the Board of Directors and General Manager
 - Targets and goals met by the entire organization
 - Procurement techniques and contracting vehicles that best meets the mission and objectives established by the Board of Directors and General Manager.

The Office of Civil Rights is the Advocate; OCR does not make the “Buy Decision” and thus, cannot be solely accountable to the Board for the organization's performance on inclusive procurement.

BART Organizational Recommendations

- Promote greater transparency and accountability in procurement and post-award contract activity:
 - Develop fully integrated data systems that address procurement, project management, OCR and accounts payable requirements
 - To maximize transparency of procurement decision-making
 - To ensure compliance with requirements of 49 CFR Part 26
 - To allow for greater planning consistent with strategic mission and policy objectives
 - To allow BART staff to respond real-time to inclusion/exclusion issues
 - Review procurement methods and contract vehicles utilized to ensure transparency and accountability on decision-making pre- and post-award
 - Monitor contracts for issues of overconcentration

BART Organizational Recommendations

Promote greater transparency and accountability, cont.:

- Ensure that Decision-Making within BART can be monitored, using an EEO Applicant Flow model equivalent:

EEO Applicant Flow	RWA SM and Disparity Analysis Equivalent
Labor Force	Potential Availability from D&B Firms, Firms Receiving Building Permits and/or Business License, certified DBE, SBE and MWBE firms, non-certified DBE, SBE and MWBE firms, trade organization membership; yellow pages
Potential Applicants	Registered Vendors, Plan Holders, Pre-Qualified Vendors
Actual Applicants	Bidders and Sub-bidders (inclusive of quotes)
Actual Hires	Awardees and Payees
Actual Promotions	Difference between prime and subcontracting opportunities; vendor performance
Actual Terminations	Contract terminations, for convenience and for cause; substitutions

BART Organizational Recommendations

- Develop “development-based” inclusion programs based on 7 Stages of DevelopmentSM
 - Planning
 - Financing
 - (Opportunity (lost??): M/W/DBE Participation on \$3.5 billion bond package)
 - Designing
 - Construction
 - Equipping
 - Maintaining
 - Operating

BART Organizational Recommendations

- Promote prime level participation
 - Identify prime-level procurement opportunities where a significant pool of DBEs, SBEs and MWBEs are available
 - Establish prime-level participation targets (federal only)
 - Increase the utilization of SBE set-asides and sheltered market opportunities
 - Advertise small business opportunities
 - Review pool of DBE, SBE and MWBE sub-bidders and subcontractors to determine those ready for prime level awards
 - Utilize bid rotation on IDIQs
 - Unbundle contracts into commercially viable units
 - Optimize joint ventures, mentor/protégé, distributors program

BART Organizational Recommendations

- In ensuring BART is not a “passive participant” in marketplace discrimination,
 - Maximize utilization of Public Contract Code 4100-4114, “Subletting and Subcontracting Fair Practices Act” governing public works
 - Prohibitions on Subcontractor substitutions
 - Advisement and notice requirements for bonding and insurance
 - Not using other means for bid shopping and bid peddling
- Ensure similar procedural, legislative and statutory support for modern construction techniques utilized under A&E, Construction Management, Design-Build, and Other Design and Construction-Related Professional Services

BART DBE and SB Program Recommendations

- Develop Effective Outreach and Matchmaking Programs
 - Coordinate with Forecasting and Budgeting
 - Determine if participation in matchmaking can be deemed part of good faith efforts under 49 CFR Part 26 and BART's Non-Discrimination Program
 - Within the definition of inclusive outreach under Proposition 209, work to expand the vendor and bidder pool using outreach techniques.

BART DBE and SB Program Recommendations

- Maximize utilization of Small Business and Sheltered Market Projects
- Collaborate with Management and Technical Assistance Providers on Bonding and Insurance Program related to Development-base Procurement Effort
- Certify and track Joint Ventures, Mentor-Protégé, and Distributorships
- Develop working capital and paymaster programs with Financial Assistance Providers



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December 1, 2016

Thank You!